

# SENATE RECORD VOTE ANALYSIS

105th Congress  
1st Session

Vote No. 120

June 25, 1997, 12:01 pm  
Page S-6299 Temp. Record

## BALANCED BUDGET ACT/Right to Pay Doctors with Non-Medicare Funds

**SUBJECT:** Balanced Budget Act of 1997 . . . S. 947. Kyl motion to waive the Budget Act for the consideration of the Domenici (for Kyl) amendment No. 468.

### ACTION: MOTION AGREED TO, 64-35

**SYNOPSIS:** As reported, S. 947, the Balanced Budget Act of 1997, will make net mandatory spending reductions to achieve the savings necessary to balance the budget by 2002 and to provide the American people with tax relief. This bill is the first reconciliation bill that is required by H.Con. Res. 84, the Budget Resolution for fiscal year (FY) 1998 (see vote No. 92). The second bill will provide tax relief (see vote No. 160).

**The Domenici (for Kyl) amendment** would make it legal for a person who becomes eligible for Medicare who has been seeing a physician who does not accept Medicare patients to continue seeing that physician and to pay him or her with non-Medicare funds. (The Health Care Finance Administration (HCFA) has interpreted the Medicare Technical Corrections Act of 1994 as prohibiting Medicare patients from using their own funds to continue seeing the doctors they have always gone to if those doctors do not accept Medicare patients).

The amendment was offered after all debate time had expired. However, by unanimous consent some debate was permitted. Senator Lautenberg raised the point of order that the Kyl amendment violated section 305(b)(2) of the Budget Act. Senator Kyl then moved to waive the Budget Act for the consideration of the amendment. Generally, those favoring the motion to waive favored the amendment; those opposing the motion to waive opposed the amendment.

NOTE: A three-fifths majority (60) vote is required to waive the Budget Act. After vote, amendment was adopted by voice vote.

**Those favoring** the motion to waive contended:

The Kyl amendment would make a technical correction to, ironically, the Medicare Technical Corrections Act of 1994. The

(See other side)

YEAS (64)			NAYS (35)		NOT VOTING (1)	
Republicans (55 or 100%)	Democrats (9 or 20%)		Republicans (0 or 0%)	Democrats (35 or 80%)	Republicans (0)	Democrats (1)
Abraham	Hutchinson	Biden		Akaka		Inouye- <sup>2</sup>
Allard	Hutchison	Breaux		Baucus		
Ashcroft	Inhofe	Dodd		Bingaman		
Bennett	Jeffords	Feinstein		Boxer		
Bond	Kempthorne	Glenn		Bryan		
Brownback	Kyl	Hollings		Bumpers		
Burns	Lott	Landrieu		Byrd		
Campbell	Lugar	Lieberman		Cleland		
Chafee	Mack	Robb		Conrad		
Coats	McCain			Daschle		
Cochran	McConnell			Dorgan		
Collins	Murkowski			Durbin		
Coverdell	Nickles			Feingold		
Craig	Roberts			Ford		
D'Amato	Roth			Graham		
DeWine	Santorum			Harkin		
Domenici	Sessions			Johnson		
Enzi	Shelby			Kennedy		
Faircloth	Smith, Bob					
Frist	Smith, Gordon					
Gorton	Snowe					
Gramm	Specter					
Grams	Stevens					
Grassley	Thomas					
Gregg	Thompson					
Hagel	Thurmond					
Hatch	Warner					
Helms						

#### EXPLANATION OF ABSENCE:

1—Official Business  
2—Necessarily Absent  
3—Illness  
4—Other

#### SYMBOLS:

AY—Announced Yea  
AN—Announced Nay  
PY—Paired Yea  
PN—Paired Nay

HCFA has misinterpreted one provision of that Act. It has decided that it is illegal for a doctor who has been treating a patient for decades to accept any payment from that patient once that patient is eligible for Medicare benefits unless the money is from Medicare. About 9 percent of the physicians in this country refuse Medicare patients. Thus, a doctor who does not take Medicare patients may treat someone for decades, but as soon as that person turns 65 no services that are covered under Medicare may be provided. It does not matter if that person wants to keep going to a trusted doctor and pay out of his or her own pocket; the only legal arrangement, according to the HCFA, is to make Uncle Sam pay by going to a doctor who will accept Medicare funds. Congress did not intend for this interpretation to be made; the Kyl amendment would correct the mistake. The Budget Act should be waived for the consideration of this amendment.

**Those opposing** the motion to waive contended:

We do not view this amendment as addressing a technical matter. It would allow something very close to balance billing, which is controversial. This legislative change does not belong on a fast-track reconciliation bill. Accordingly, we oppose the motion to waive.